

CS for SB 1300

1 THE STATE SENATE  
2 Thursday, February 19, 2004

3 Committee Substitute for  
4 Senate Bill No. 1300

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1300 - By: PRICE of the  
6 Senate and COVEY of the House.

7 An Act relating to agriculture; creating the Oklahoma Beef  
8 Improvement and Market Development Act; providing for  
9 legislative intent; creating Oklahoma Beef Council;  
10 establishing duties of Council; defining terms; providing  
11 for appointment of Board members; defining purpose of  
12 Council; providing for authority of Council; authorizing  
13 acceptance of certain funds; providing for payments;  
14 authorizing assessment; establishing collection of  
15 assessment; providing for penalties; creating exemption from  
16 assessment; providing for refund of assessment; providing  
17 for adoption of bylaws; providing for deposit of funds;  
18 providing for codification; and providing an effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 18-30 of Title 2, unless there  
22 is created a duplication in numbering, reads as follows:

23 This act shall be known and may be cited as the "Oklahoma Beef  
24 Improvement and Market Development Act".

25 SECTION 2. NEW LAW A new section of law to be codified  
26 in the Oklahoma Statutes as Section 18-31 of Title 2, unless there  
27 is created a duplication in numbering, reads as follows:

28 A. It is the intent of the Legislature to:

- 29 1. Create the Oklahoma Beef Council;

- 1        2. Promote the growth of the cattle industry in Oklahoma;
- 2        3. Assure an adequate and wholesome food supply;
- 3        4. Provide for the general economic welfare of producers and
- 4 consumers of beef; and
- 5        5. Provide the beef cattle industry with the authority to
- 6 establish a self-financed, self-governed program to develop,
- 7 maintain, and expand the state, national, and foreign markets for
- 8 beef and beef products produced, processed, or manufactured in this
- 9 state.

10        B. The promotion, marketing, research, and educational efforts  
11 concerning beef and beef products, pursuant to the Oklahoma Beef  
12 Improvement and Market Development Act, shall utilize existing  
13 cattle industry infrastructure to the extent possible.

14        SECTION 3.        NEW LAW        A new section of law to be codified  
15 in the Oklahoma Statutes as Section 18-32 of Title 2, unless there  
16 is created a duplication in numbering, reads as follows:

17        As used in the Oklahoma Beef Improvement and Market Development  
18 Act:

- 19        1. "Beef" and "beef products" mean the meat intended for human  
20 consumption from any cattle, including, but not limited to, veal;
- 21        2. "Cattle" means all bovine animals, regardless of age;

1           3. "Council" means the Oklahoma Beef Council established under  
2 the Oklahoma Beef Improvement and Market Development Act to  
3 administer and govern the program;

4           4. "Market agent" means any person or entity who sells, offers  
5 for sale, markets, distributes, trades, or processes cattle  
6 purchased or acquired from a producer, or marketed on behalf of a  
7 producer, and includes, but is not limited to, cattle feeders and  
8 meatpacking firms and their agents that purchase or consign to  
9 purchase cattle;

10          5. "Person" includes individuals, partnerships, firms,  
11 corporations, associations, trusts, estates, limited liability  
12 companies and any other legal entities recognized to do business in  
13 Oklahoma; and

14          6. "Producer" means a person that owned or sold cattle in the  
15 previous calendar year or presently owns cattle.

16          SECTION 4.        NEW LAW        A new section of law to be codified  
17 in the Oklahoma Statutes as Section 18-33 of Title 2, unless there  
18 is created a duplication in numbering, reads as follows:

19          A. The Board of the Oklahoma Beef Council shall consist of nine  
20 (9) members and shall be composed as follows:

21          1. The Governor shall appoint three members as follows:

- 1           a.    one member representing a general farm organization  
2                    which represents more than 150,000 members in the  
3                    state,  
4           b.    one member representing the dairy producers in the  
5                    state, and  
6           c.    one member of an Oklahoma association representing  
7                    livestock auction markets and livestock dealers in  
8                    which the member's primary responsibility is the  
9                    collection and remittance of assessment funds;

10           2.    The President Pro Tempore of the Senate shall appoint three  
11 members as follows:

- 12           a.    one member from a women's auxiliary group of a general  
13                    farm organization representing more than 150,000  
14                    members in the state,  
15           b.    one member of a statewide women's beef cattle  
16                    association, incorporated in Oklahoma, whose primary  
17                    purpose is beef product promotion and education, and  
18           c.    one member representing a general farm organization  
19                    which represents more than 100,000 members in the  
20                    state;

21           3.    The Speaker of the House of Representatives shall appoint  
22 three members as follows:

- 1           a.    one member of an Oklahoma association representing  
2                    livestock auction markets and livestock dealers,  
3           b.    one member of a statewide beef cattle producer-owned  
4                    association, incorporated in Oklahoma, comprised of  
5                    more than 5,000 Oklahoma-based producer members  
6                    organization representing cattle producers in the  
7                    state, and  
8           c.    one member from an women's auxiliary group of a  
9                    general farm organization representing more than  
10                  100,000 members in the state;

11           B.    The initial appointments for each gubernatorial and  
12   legislative member shall be for progressive terms of one (1) through  
13   three (3) years; subsequent appointments shall be for three-year  
14   terms. Members shall continue to serve until their successors are  
15   appointed. Any vacancy shall be filled in the same manner as the  
16   original appointments. No member shall serve more than two  
17   consecutive terms.

18           SECTION 5.       NEW LAW       A new section of law to be codified  
19   in the Oklahoma Statutes as Section 18-34 of Title 2, unless there  
20   is created a duplication in numbering, reads as follows:

21           A.    There is hereby created, to continue until July 1, 2010, in  
22   accordance with the provisions of the Oklahoma Sunset Law, the  
23   Oklahoma Beef Council.

- 1           B. The Oklahoma Beef Council shall:
- 2           1. Promote the sale and use of beef and beef products, support  
3 national beef promotion, research, education, and other consumer  
4 marketing activities related to beef and cattle production, and  
5 otherwise support consumer market development and promotion efforts  
6 on a national and international scale;
- 7           2. Develop new uses and markets for beef and beef products;
- 8           3. Develop and improve methods of distributing beef and beef  
9 products to the consumer;
- 10          4. Develop methods of improving the quality and safety of beef  
11 and beef products for consumer benefit;
- 12          5. Inform and educate the public of the nutritive, safety, and  
13 economic values of beef and beef products;
- 14          6. Function in a liaison capacity with the beef and other food  
15 industries of the state and elsewhere in matters that would increase  
16 efficiencies ultimately benefiting the consumer and the industry;
- 17          7. Receive and disburse funds for use in administering and  
18 implementing the provisions and intent of the Oklahoma Beef  
19 Improvement and Market Development Act;
- 20          8. Annually elect a chairperson from among its members who may  
21 be reelected for not more than one one-year term;

- 1           9. Meet regularly, but in no case shall meet less than one time  
2 per calendar quarter, at any other times as called by the Chair, or  
3 upon request by three or more members of the Council;
- 4           10. Maintain a permanent record of all business proceedings;
- 5           11. Maintain a permanent and detailed record of all financial  
6 dealings;
- 7           12. Prepare periodic reports and an annual report of all  
8 activities for each fiscal year, for review by the beef cattle  
9 industry of the state. The annual report shall be filed with the  
10 Chair of the Senate Agriculture and Rural Development Committee or  
11 successor committee, the Chair of the House Agriculture Committee or  
12 successor committee, the Commissioner of the Oklahoma Department of  
13 Agriculture, Food, and Forestry, and the Governor;
- 14           13. Prepare periodic reports and an annual accounting for each  
15 fiscal year of all receipts and expenditures for review of the beef  
16 cattle industry of the state and provide for annual audits conducted  
17 by a certified public accounting firm;
- 18           14. Adopt and promulgate rules pursuant to the Administrative  
19 Procedures Act, with the assistance of the Oklahoma Department of  
20 Agriculture, Food, and Forestry if requested by the Council, for  
21 implementation of the Oklahoma Beef Improvement and Market  
22 Development Act;

1        15. Appoint a licensed banking institution as the depository  
2 for program funds and disbursements as authorized by the State  
3 Treasurer;

4        16. Maintain an office at a specific location in Oklahoma that  
5 is accessible to beef producers and conducive to operating the  
6 programs of the Council; and

7        17. Have such other powers and duties to implement the Oklahoma  
8 Beef Improvement and Market Development Act.

9        C. The Council may:

10       1. Conduct or contract for scientific research with any  
11 accredited university, college, or similar institution and enter  
12 into other contracts or agreements that aid in carrying out the  
13 purposes of the Oklahoma Beef Improvement and Market Development  
14 Act, including but not limited to contracts for the purchase or  
15 acquisition of facilities, advertising, or equipment;

16       2. Disseminate reliable information benefiting consumers and  
17 the beef cattle industry on subjects including, but not limited to,  
18 purchase, identification, care, storage, handling, cookery,  
19 preparation, serving size or portion, and nutritional value of beef  
20 and beef products;

21       3. Provide information to various governmental bodies, upon  
22 request, on subjects of concern to the beef industry and act jointly  
23 or in cooperation with the state or federal government, and agencies

1 thereof, in the development or administration of programs deemed by  
2 the Council as consistent with the objectives of the Oklahoma Beef  
3 Improvement and Market Development Act;

4 4. Cause any civil action to be filed to enforce the provisions  
5 of the Oklahoma Beef Improvement and Market Development Act;

6 5. Appoint advisory groups composed of representatives from  
7 organizations, institutions, governments, or business related to or  
8 interested in the welfare of the beef industry and the consuming  
9 public;

10 6. Employ an Executive Director and employees of the Council  
11 and prescribe their duties and fix their compensation and terms of  
12 employment;

13 7. Cooperate with any local, state, regional or nationwide  
14 organization or agency engaged in work or activities consistent with  
15 the objectives of the Oklahoma Beef Improvement and Market  
16 Development Act; and

17 8. Cause any duly authorized agent or representative of the  
18 Council to enter upon the premises of any market agent with proper  
19 warrants and examine or require examination of only those books,  
20 papers, and records associated in any way with payments of  
21 assessments or enforcement of the Oklahoma Beef Improvement and  
22 Market Development Act. It shall be incumbent upon the Council to  
23 make appropriate arrangements with the persons being examined to

1 ensure that an orderly examination is made that does not impede on  
2 the person's normal course of business.

3 D. Members of the Council shall not be individually liable for  
4 acts of the Council when acting within the scope of the Council's  
5 powers and in the manner prescribed by the laws of the state;

6 SECTION 6. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 18-35 of Title 2, unless there  
8 is created a duplication in numbering, reads as follows:

9 The members of the Oklahoma Beef Council shall:

10 1. Be actively engaged in beef production during the year prior  
11 to appointment and continuing throughout the term;

12 2. Have not been found in violation of the Oklahoma Beef  
13 Improvement and Market Development Act pursuant to an administrative  
14 hearing or court proceeding; and

15 3. Have not requested a refund within the preceding three (3)  
16 years of being appointed.

17 SECTION 7. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 18-36 of Title 2, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. The Oklahoma Beef Council may levy on each producer selling  
21 cattle within or from this state an assessment of up to One Dollar  
22 (\$1.00) per head on cattle sold. The state assessment shall be  
23 determined by the Council through the promulgation of rules

1 established pursuant to the Administrative Procedures Act. In no  
2 event shall the combined federal and state beef assessment exceed  
3 One Dollar (\$1.00).

4 B. The fee shall be assessed and imposed as follows:

5 1. Upon the cattle producer at the time of a sale by the  
6 producer. Except for a sale through a market agent, the assessment  
7 shall be collected and remitted by the producers to the Council; or

8 2. Every market agent doing business in the State of Oklahoma  
9 shall deduct from the gross receipts of the producer at the time of  
10 sale the assessment on all cattle sold in the state for the  
11 producer.

12 C. 1. The Council shall establish, by rule, the procedures for  
13 the collection and remittance of the assessment.

14 2. The amount of the assessment collected shall be clearly  
15 shown on the sales invoice or other document evidencing the  
16 transaction.

17 3. The producer and marketing agent shall forward all  
18 assessments collected by the producer or market agent, as  
19 appropriate, to the Council by the fifteenth of the month following  
20 the month of collection. The Council shall provide appropriate  
21 forms for the remittance of the assessment.

1 D. The Council shall maintain within its financial records a  
2 separate accounting of all monies received pursuant to the  
3 provisions of this section.

4 E. All monies deducted under the provisions of this section  
5 shall be considered as bona fide business expenses for the producer  
6 as provided for under the tax laws of this state.

7 F. The Council may adopt reciprocal agreements with other beef  
8 councils or similar organizations on monies collected by Oklahoma  
9 market agents on cattle from other states and on Oklahoma cattle  
10 sold at other states' markets.

11 G. A person may be exempted from payment of the assessment if  
12 that person:

13 1. Certifies that the person's only share in the proceeds of a  
14 sale of cattle is a sales commission, handling fee, or other service  
15 fee; or

16 2. Certifies that:

17 a. the person acquired ownership of cattle only to  
18 facilitate the transfer of ownership of the cattle  
19 from the producer to a third party,

20 b. the cattle were resold no later than ten (10) days  
21 from the date the person acquired ownership, and

22 c. the assessment, if applicable, was levied upon the  
23 previous owner and collected and remitted, or will be

1                   remitted pursuant to the provisions of the Oklahoma  
2                   Beef Improvement and Market Development Act.

3           SECTION 8.           NEW LAW           A new section of law to be codified  
4   in the Oklahoma Statutes as Section 18-37 of Title 2, unless there  
5   is created a duplication in numbering, reads as follows:

6           A.   The Council may institute any action necessary to enforce  
7   compliance with any provision of the Oklahoma Beef Improvement and  
8   Market Development Act and rules promulgated pursuant to the  
9   Oklahoma Beef Improvement and Market Development Act.  In addition  
10   to any other remedy provided by law, the Council may petition for  
11   injunctive relief.

12           B.   1.   Any due and payable assessment required under the  
13   Oklahoma Beef Improvement and Market Development Act constitutes a  
14   personal debt of the person or marketing agent assessed.

15           2.   In the event of failure of a person or marketing agent to  
16   remit any properly due assessment or sum, the Council in order to  
17   collect an assessment may bring an administrative action and may  
18   bring a civil action in district court against that person.  If an  
19   action is brought in the district court, such action will be brought  
20   in the district court of any county in which the sale is conducted.

21           3.   In addition to collection of the assessment, the Council may  
22   also collect a ten-percent-penalty assessment, the costs of  
23   enforcing the collection of the assessment, and any court costs.

1           4. The civil action in district court shall be tried and  
2 judgment rendered as in any other cause of action for debts due and  
3 payable. Any administrative hearing shall be conducted pursuant to  
4 the Administrative Procedures Act.

5           5. All assessments, penalty assessments, and enforcement costs  
6 recovered are due and payable to the Council.

7           SECTION 9.           NEW LAW           A new section of law to be codified  
8 in the Oklahoma Statutes as Section 18-38 of Title 2, unless there  
9 is created a duplication in numbering, reads as follows:

10           A. Any producer who has paid the assessment under the  
11 provisions of the Oklahoma Beef Improvement and Market Development  
12 Act shall be entitled to a refund upon a valid request to the  
13 Council.

14           B. The Council shall make available to all producers and  
15 marketing agents forms for refund requests.

16           C. Refund claims shall be submitted by the producer within  
17 forty-five (45) days of the payment of the assessment and shall  
18 include a signature, date of sale, place of sale, number of cattle,  
19 amount of assessment deducted, and proof of the payment of the  
20 deducted assessment.

21           D. 1. Upon verification of a valid refund request, the Council  
22 shall remit a refund to the producer within forty-five (45) days of  
23 the valid request.

1           2. In the event the Council fails to remit the valid requested  
2 refund as required by this subsection, the producer may bring a  
3 civil action against the Council in the district court of the county  
4 in which the office of the Council is located for collection of the  
5 refund, a ten-percent-penalty assessment, and all court costs.

6           3. The civil action shall be tried and judgment rendered as in  
7 any other cause of action for debts due and payable.

8           4. All assessments, penalty assessments, and enforcement costs  
9 recovered are due and payable to the producer.

10          E. If the Council has reasonable doubt that a refund claim is  
11 valid, it may withhold payment and take action as deemed necessary  
12 to determine its validity.

13          F. All requests for refunds shall only be initiated by the  
14 producer.

15          SECTION 10.        NEW LAW        A new section of law to be codified  
16 in the Oklahoma Statutes as Section 18-39 of Title 2, unless there  
17 is created a duplication in numbering, reads as follows:

18           Within ninety (90) days of the effective date of this act, the  
19 Oklahoma Beef Council shall promulgate the necessary rules for the  
20 Council to carry out the intent and purposes of the Oklahoma Beef  
21 Improvement and Market Development Act.

1 SECTION 11. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 18-40 of Title 2, unless there  
3 is created a duplication in numbering, reads as follows:

4 The Oklahoma Beef Council shall not be subject to the laws of  
5 this state dealing with the:

- 6 1. Office of Personnel Management; or
- 7 2. Competitive Bidding Act administered by the Department of  
8 Central Services.

9 SECTION 12. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 18-41 of Title 2, unless there  
11 is created a duplication in numbering, reads as follows:

12 The Oklahoma Beef Improvement and Market Development Act shall  
13 become effective only upon the cessation or part thereof of the  
14 federal Beef Promotion and Research Act of 1985, 7 U.S.C., Sections  
15 2901 through 2911, upon certification by the Oklahoma Commissioner  
16 of Agriculture.

17 SECTION 13. This act shall become effective November 1, 2004.

18 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,  
19 dated 2-17-04 - DO PASS, As Amended and Coauthored.